IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (LODG.) NO. 1004 OF 2006

IN

NOTICE OF MOTION NO. OF 2006

IN

SUIT (LODG.) NO. 3309 OF 2006

Kalabakan Investments Co.Ltd.& Ors... Appellants.

Versus

Groupe Danone & others..... .. Respondents.

Mr.F.S.Nariman, Senior Counsel a/w Mr. A.P.Chinoy, Senior Counsel, Mr. D.J.Khambatta, Senior Counsel and Mr. V.R.Dhond i/by M/s.Crawford Bayley & Co., for the Appellants.

Mr.Janak Dwarkadas, Senior Counsel, i/by M/s.Amarchand Mangaldas & S.A.Shroff & Co. for Respondent No.1.

Mr.A.Y.Bookwala, Senior Counsel with Mr. Rajendra Barot, Mr.Shailesh Shukla, Mr.Pragni Kapadia and Mr.Nikhil Sakhardande i/by M/s.AZB & Partners for Respondent No.3.

Mr. Rohit Kapadia, Senior Counsel with Mr.Pradeep Sancheti i/by M/s.Amarchand Mangaldas & S.A.Shroff & Co., for Respondent No.4.

CORAM : R. M. LODHA, and
S. A. BOBDE, JJ.

DATED : 5TH DECEMBER, 2006.

P.C.:

We heard the Senior Counsel for the parties and

perused the impugned order. We also considered clauses 9.1, 9.2 and 9.3 of the Joint Venture Agreement dated 12th September, 1995.

2. Since the appeal is from the ad-interim order, we do not intend to go into the diverse aspects of the matter, but prima facie, on consideration of available material it appears to us that the defendant no.1 acted in breach of clause 9.1 of the Joint Venture Agreement.

3. We are informed that defendant no.3 has already allotted 1,77,341 fully paid up equity shares of Rs.10/- each bearing distinctive nos. 2981827 to 3159167 to defendant no.4 on 24th November, 2006. Since the defendant no.1 has been found by us, prima facie, to have acted in breach of Clause 9.1 of the agreement and the defendant no.3 has allotted the aforerefered shares to the defendant no.4 as the nominee of the defendant no.1, in our considered view, limited restraint order deserves to be passed.

4. By way of an ad-interim order pending hearing of the notice of motion, we, accordingly, restrain the defendant no.4 from encumbering, alienating or

creating any third party rights and interest in respect of aforenoted shares.

5. We request the learned Motion Judge to hear and decide the notice of motion expeditiously, and if possible, by 31st January, 2007. The defendants shall complete their pleadings for consideration of notice of motion by 10th January, 2007.

6. The restraint order shall also operate in respect of investment agreement dated 22nd November, 2006 as well.

7. The order passed by the learned motion Judge stands modified, accordingly.

8. Appeal stands disposed of. Needless to say that the consideration of notice of motion finally by the learned motion Judge shall not be influenced by this order.

Sd/-

(R. M. LODHA, J.)

Sd/-

(S. A. BOBDE, J.)